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The Debt to Taft

March 7, 1989:

Joe Perpich visited today. He comes every few months or so to bring me clippings about HHMI's financial dog-fights with General Motors, descriptions of the Third Program activities -- some of them fruition of ideas I left with him before I left the President's chair-- or to reminisce on the earlier NIH or IOM days. As we sat around the comforting warmth of the Jotul, he suddenly mentioned William Howard Taft III, about whom a satirical article had appeared in this morning's Washington Post. It described Will's mild manner and pale complexion, accompanied by pictures showing him playing host to President Bush and John Tower, the besieged nominee to head the Defense Department, left for the moment in the hands of Will, its General Counsel and the highest ranking man in charge. Will had been Weinberger's counsel at the Pentagon for most of the latter's tenure there. But there had been a gap between their association, of a few months when Will remained behind at the HEW, "Cap" having left for Defense. It was during those months that Will Taft was the general counsel to Weinberger's successor as Secretary of HEW, David Mathews, that he made two decisions of crucial importance to us, and to all those who were eager to gain access to use of the central technology of recombing genes.

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It was in April or May, of 1976. We had gone to Mathews, known widely as "The Phantom" because of the tentative nature of his public service. We had two requests, both vital to our plan to govern the use of recombinant DNA technology by NIH Guidelines. A controversial and tortuous route had led us to two important decisions. The first was an intent to insist that the government's permission to use the most remarkable techniques in the history of biology would be according to guidelines, promulgated by the Director of NIH, rather than according to rulemaking, necessitating far more cumbersome and inflexible conditions in which to achieve the essential new knowledge about the use and possible dangers of the research. The second, parallel to the first, was our decision to promulgate the guidelines before attempting to issue an environmental impact statement. [1] .

The lower echelons of the department's bureaucracy had sent memoranda to the Secretary denying our requests. The general counsel staff had insisted that rule-making was the required route. The NEPA office had adamantly insisted upon a prior EIS. We obtained permission to lay our case before the general counsel, William H. Taft IV.

To our great relief, and to his credit, Taft overruled both his legal staff and the NEPA guardians. It was the opinion of this

[1] The NIH guidelines were a federal government action, and according to the critics a sufficiently "significant" such action that the filing of an environmental impact statement must proceed the promulgation of the guidelines as mandated by the National Environmental Protection Act (NEPA).

pallid public servant that the NIH Director had previously demonstrated his authority to issue Guidelines to cover research practices, and they should be adequate protection in this instance; further, the public interest was better served by guidelines now and an EIS thereafter. Courage does not need the companionship of machismo.